

REMARKS

As requested by the Examiner, Applicant has amended the specification to provide missing serial numbers (and related information) regarding the applications referred to on page 3 and 6. In reviewing the claims, Applicant noted and corrected several typographical errors. No new matter has been added.

Claims 1-20 are pending. Claims 1-20 stand rejected. Claims 1 and 3-7 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,415,596 ("Anderson") alone or if necessary in view of Jerry Korn et al., *Candy*, Time-Life Books, Alexandria, VA, pp. 8-11, 74-75, 112-113 (1981) ("Candy"). Claims 1-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,370,735 ("Rash") alone or if necessary in view of Candy. Claims 1-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,673,380 ("Yang"). By the present amendment, claims 1, 8, and 13-15 are amended to correct typographical errors. It is submitted that claims 1-20 are allowable over the cited prior art references. Reconsideration and allowance of claims 1-20 are respectfully requested.

1. Claims 1 and 3-7 are allowable over Anderson alone or in view of Candy

Neither Anderson nor Candy, either alone or in combination, teach or suggest a soy-containing confectionary product as recited in claims 1 and 3-7. Independent claim 1 is directed to a soy-containing confectionary product prepared by a method comprising:

- (1) preparing an aqueous composition comprising a soy-containing material and a sugar;
- (2) heating the aqueous composition at a temperature and for a time sufficient to caramelize at least a portion of the sugar and reduce the moisture content to less than about 30 percent to produce a caramelized composition; and
- (3) cooling the caramelized composition to form the soy-containing confectionary product . . .

wherein the soy-containing confectionary product contains at least about 5 percent soy protein without off-flavors normally associated with soybeans.

The Office Action acknowledges that "the claims appear to differ from Anderson in the recitation of the method by which the product is made." In fact, the claims also differ from Anderson in the recitation that the soy-containing confectionary product "contains at least about 5 percent soy protein without off-flavors normally associated with soybeans." Anderson does not teach or suggest a soy-containing confectionary product that contains at least about 5 percent soy protein yet does not include off-flavors normally associated with soybeans. Indeed, this unexpected property of the presently claimed soy-containing confectionary product is a result of the specific method by which the product is made.

As described in Applicant's specification, for example, at page 5, lines 16-23, it is well known that soy products have undesirable odors and flavors – often characterized as grassy and/or beany flavors – which limit the wide use of such soy materials in food products. However, as demonstrated in Applicants' Examples 1-3, by utilizing the method of the present invention whereby a soy-containing material is incorporated in an aqueous solution also containing sugar and the aqueous solution is heated to at least partially caramelize the sugar, a confectionary product can be produced which has excellent flavor and texture with no off-flavors despite the incorporation of the soy material.

Since neither Anderson nor Candy, either alone or in combination, teach or suggest a soy-containing confectionary product prepared according to the claimed steps or containing at least about 5 percent soy protein without off-flavors normally associated with soybeans, independent claim 1 and depended claims 3-7 are allowable for at least this reason.

Applicants note that Claim 2 is not rejected over Anderson and Candy. Applicants take this to be an acknowledgment that neither Anderson nor Candy, alone or in combination, teach or suggest the claimed soy-containing confectionary product "wherein the soy-containing material is at least one member of the group consisting of

soy milk, soy protein isolate, soy concentrate, and soy flour. Since claims 4 and 5 depend from claim 2, they are allowable for at least this additional reason.

2. Claims 1-20 are allowable over Rash alone or in view of Candy

Claims 1-20 stand rejected as obvious over Rash alone or in view of Candy. However, neither Rash nor Candy, alone or in combination, teach or suggest the soy-containing confectionary product recited in claims 1-7 or the method for preparing such a soy-containing confectionary product as recited in claims 8-20.

As described above, claims 1-7 are directed to a soy-containing product prepared according to the claimed process, which contains at least about 5 percent soy protein without off-flavors normally associated with soybeans. Claims 8-20 are directed to the method of preparing such a soy-containing confectionary product. Nowhere does Rash teach or suggest a soy-containing confectionary product that contains at least about 5 percent soy protein yet does not include off-flavors normally associated with soybeans. As described above, this unexpected property of the presently claimed soy-containing confectionary product is a result of the specific method by which the product is made and, as detailed further below, Rash fails to teach or suggest such a method as well.

Rash describes confection or candy mixes having relatively high levels of solubilized protein obtained using partially delactosed and partially demineralized whey having an ash content of not more than about 6.5 percent. Rash fails to teach or suggest the elements of the present method for preparing a soy-containing confectionary product for at least the following reasons. First, Rash does not teach or suggest "preparing an aqueous composition comprising a soy-containing material and a sugar." The Examiner asserts that "[t]he ingredients of Example 1 are mixed and include vegetable oil, which is [sic] examiner is interpreting to be soybean oil, soybean flour, corn syrup, water and other ingredients" and that the "vegetable oil and soybean flour together are taking [sic] to be soy-containing material." However, there is nothing in Rash to teach or suggest that the vegetable oil is soybean oil. Moreover, Rash does not teach or suggest that the vegetable oil and soybean flour are mixed together in an

aqueous composition with sugar. Instead, Rash states that "[t]he dry ingredients, namely, sodium caseinate, sugar, salt and demineralized whey were blended together," that a blend of corn syrup and water was then mixed with the dry ingredients, that the hydrogenated vegetable oil was melted and then intermixed with the other ingredients, and that this batch was cooked over a period of about 30 minutes with a cooking temperature of about 227 °F. (Rash, column 8, lines 2-12.) Notably, Rash does not state that the soybean flour was included in this mixture. Hence, even if vegetable oil could properly be interpreted to mean soybean oil, it is improper to interpret the vegetable oil and soybean flour to be a soy-containing material as called for by the present claims.

Second, Rash does not teach or suggest heating the aqueous composition at a temperature and for a time sufficient to caramelize at least a portion of the sugar and reduce the moisture content to less than about 30 percent to produce a caramelized composition." As described in Applicants' specification at, for example, page 7, lines 22-24, those skilled in the art will understand that partial caramelization is achieved when the proper caramelized color (i.e., golden brown) is obtained. Example 1 of Rash discloses a method of making a caramel type candy in which the above-described mixture was heated to 227 °F for 30 minutes. The Examiner asserts that Candy teaches that the 227 °F temperature is sufficient to caramelize the sugar in the composition. However, Applicants respectfully submit that Candy does not in fact teach that 227 °F for 30 minutes is sufficient to caramelize sugar. Rather, Candy teaches that between 223 and 234 °F, a sugar syrup will generally be in the thread stage. Candy further teaches that, generally, between 244 and 248 °F a sugar syrup will be in the so-called "firm-ball" stage at which it may typically be used to make a caramel candy such as prepared in Example 1 of Rash. Notably, Candy teaches that a sugar syrup must generally be heated up to 320-350 °F to reach the "Caramel" stage, the point at which the sugar turns golden or amber-colored. (Candy, page 10-11.)

Accordingly, neither Rash nor Candy, either alone or in combination, teach or suggest a soy-containing confectionary product prepared according to the claimed steps and containing at least about 5 percent soy protein without off-flavors normally

associated with soybeans or the claimed method for preparing such a soy-containing product. As such, claims 1-20 are allowable for at least these reasons.

3. Claims 1-20 are allowable over Yang

Claims 1-20 also stand rejected as obvious over Yang. However, Yang, like the other cited reference, fails to teach or suggest the soy-containing confectionary product that contains at least about 5 percent soy protein yet does not include off-flavors normally associated with soybeans as recited in claims 1-7 or the method for preparing such a soy-containing confectionary product as recited in claims 8-20.

Yang is directed to confectionary delivery systems for nutrients. More specifically, Yang discloses a process for providing a fortified confectionary product incorporating high percentages of a fortifying composition, such as calcium, without compromising taste or texture. (Yang, column 2, lines 11-35.) Example 1 discloses a caramel confectionary product containing 8-12% fat, 50-60% carbohydrate, and 2-4% protein. (Yang, Table 1.) Sweetened condensed skim milk is used as the protein component. (Yang, column 10, lines 5-8.) While Yang discloses that, in addition to or instead of a milk protein component, other sources of protein, including soy protein, may be used, Yang does not teach or suggest incorporation of soy protein to produce a soy-containing confectionary product containing at least about 5 percent soy protein. Furthermore, although an object of Yang is to provide a confectionary product including high percentages of a fortifying composition without compromising taste or texture, Yang does not address the off-flavors associated with soybeans. As described above, as a result of the specific method by which the present soy-containing confectionary product is made, it is unexpectedly able to contain at least about 5 percent soy protein without such off-flavors. Thus, claims 1-20 are allowable over Yang for at least these reasons.

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Reply to the Office action of September 25, 2006

In view of the foregoing remarks, reconsideration and allowance of claims 1-20 are respectfully requested. The Commissioner is hereby authorized to charge any which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: January 3, 2007
120 S. LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007

s/Sarah M. Walkington/
Sarah M. Walkington
Registration No. 55,803